

ATTORNEY GENERAL'S OPEN RECORDS AND MEETINGS OPINION
No. 98-O-09

DATE ISSUED: May 7, 1998

ISSUED TO: Nick Zaharia, Chairman, Pembina Township Board of Supervisors

CITIZEN'S REQUEST FOR OPINION

On March 30, 1998, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Don Defoe asking whether the Pembina Township Board of Supervisors violated N.D.C.C. §§ 44-04-20 and 44-04-21(2) by failing to provide sufficient notice of the Board's meeting on March 2 and by failing to keep sufficient minutes of that meeting, and whether the Pembina Township clerk violated N.D.C.C. § 44-04-20 by failing to provide sufficient notice of the annual meeting of the township electors on March 17.

FACTS PRESENTED

The board of township supervisors for Pembina Township (Board) held a meeting on March 2, 1998. According to the Board, the meeting was a continuation of a February 23, 1998, meeting which was continued because a quorum was not present. The county auditor was notified by telephone of the time, place, and date of the February 23 meeting, but did not receive a written notice. The people who attended the February 23 meeting were informed that the meeting was being continued until March 2, but no additional notice of the March 2 meeting was apparently prepared, posted, or filed. Minutes were kept of the March 2 meeting by the acting clerk of the township.

The annual meeting of the electors of Pembina Township was held on March 17, 1998. Notice of the meeting was published twice in the Pembina New Era, but a notice of the meeting was not posted on the door of the meeting location.

ISSUES

1. Whether the March 2 meeting of the Board was preceded by public notice in substantial compliance with N.D.C.C. § 44-04-20.

2. Whether the March 17 meeting of the township electors was preceded by sufficient public notice.
3. Whether the minutes of the March 2 meeting of the Board meet the requirements of N.D.C.C. § 44-04-21.

ANALYSES

Issue One:

A township is a political subdivision and is therefore a "public entity" subject to the open records and meetings laws. N.D.C.C. § 44-04-17.1(10), (12)(b). Meetings of the governing body of a public entity are required to be open to the public unless otherwise provided by law. N.D.C.C. § 44-04-19. The township board of supervisors is the "governing body" of the township as that phrase is defined in N.D.C.C. § 44-04-17.1(6). Therefore, meetings of the Board are required to be open to the public unless a specific law provides otherwise. In addition, notice of the meetings must be provided in substantial compliance with N.D.C.C. § 44-04-20. See N.D.C.C. § 44-04-20(9).

N.D.C.C. § 44-04-20(4) provides:

The notice required in this section must be posted at the principal office of the governing body holding the meeting, if such exists, and at the location of the meeting on the day of the meeting. In addition, . . . the notice must be filed in the office of the secretary of state for state-level bodies . . . , the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other bodies.
. . .

The requester alleges that the Board neither filed its notice of the March 2 meeting with the county auditor nor posted the notice at the location of the meeting, both of which are required under N.D.C.C. § 44-04-20. For regular meetings of governing bodies that have no main office, like Pembina Township, filing with the county auditor and posting at the location of the meeting are the two ways the Board is required to provide public notice of its meetings under N.D.C.C. § 44-04-20. Here, there was literally no public notice of the March 2 meeting except the announcement to those attending the February 23 meeting.

The Board has responded that the March 2 meeting was a continuation of the February 23 meeting, for which the county auditor was advised by telephone. Since a quorum was not present at the February 23 meeting, those in attendance were told that the meeting was rescheduled for March 2.

There is no specific exception to N.D.C.C. § 44-04-20 for continuations of other meetings.¹ Rather, the open meetings law applies to each "gathering" of a quorum of the members of a governing body. N.D.C.C. § 44-04-17.1.

A meeting that has been continued from a meeting held earlier is known as an "adjourned meeting." See Robert's Rules of Order 79-80 (newly revised 1981). Whether an adjourned meeting must be preceded by the same public notice as the meeting from which it is continued is an open question² that does not need to be addressed in this opinion because the March 2 meeting of Board cannot be properly described as a "continuation" of the February 23 meeting. Lacking the presence of a quorum, no meeting of the Board was convened on February 23. Thus, the March 2 regular meeting of the Board cannot be described as a continuation of a meeting held on February 23. Rather, the February 23 meeting was postponed or rescheduled for March 2.

It is my opinion that, when a meeting is postponed or rescheduled, notice of the rescheduled meeting must be provided as required in N.D.C.C. § 44-04-20. Therefore, it is my further opinion that a

¹ Even if the notice of the February 23 meeting was considered, there was no notice filed with the county auditor or posted at the location for that meeting. Oral notice to the county auditor is usually not sufficient, unless there are compelling circumstances justifying the failure to provide prior written notice and the county auditor writes down the required information and files that notice with other meeting notices in the auditor's office.

² Compare Dunn v. Mayor and Council, 394 A.2d 145, 146 (N.J. Super. Ct. App. Div. 1978) (meeting cannot be resumed on the following day without new notice to public) and Florida Op. Att'y Gen. 90-56 (July 24, 1990) (same) with Del Greco v. Mayor of Revere, 294 N.E.2d 594, 597 (Mass. App. Ct. 1973) (adjourned meeting is a continuation of the same meeting) and South Harrison Township Comm. v. County of Gloucester, 516 A.2d 1140, 1155 (N.J. Super Ct. Law Div. 1985) (meeting can be recessed until next day), rev'd on other grounds, 510 A.2d 42, 46 (N.J. Super. Ct. App. Div. 1986).

separate notice was required to be filed and posted for the Board's March 2 meeting, and that the Board did not provide notice of that meeting in substantial compliance with N.D.C.C. § 44-04-20.³

Issue Two:

As indicated earlier, for regular meetings of governing bodies that have no main office, like Pembina Township, filing the notice with the county auditor and posting the notice at the location of the meeting are the two steps required to provide public notice of meetings under N.D.C.C. § 44-04-20. The group of township electors who attended the meeting appear to fall within the definition of "governing body." N.D.C.C. § 44-04-17.1(6). Unlike the March 2 meeting of the Board, the only alleged deficiency with the notice of the March 17 meeting of the township electors is that the notice was not posted on the door of the meeting. Also unlike the March 2 meeting, the notice was published twice in the local newspaper as required in N.D.C.C. § 58-04-01. Because the only alleged deficiency in the notice was the failure to post the notice on the door of the meeting location, and because the notice was published twice in the local newspaper, it is my opinion that public notice of the March 17 meeting was provided in substantial compliance with N.D.C.C. § 44-04-20.

Issue Three:

The minutes of the March 2 meeting are handwritten and difficult to read. They state:

Township Meeting March 2, 98: Michelle Stempert, Richard Simmons, Nick Zaharia, Edward Haugen - airport abatement - approve abatement - Bills - county - [illegible] Clark, [illegible], George Meagher, [illegible], Michelle Stempert, Richard Simmons, all paid in full. Annual meeting 3rd Tuesday in March, voting 1-5 pm, meeting 2 pm. Meeting adjourned. Edward Haugen, Acting Clerk.

Minutes of Board meetings, like other governing bodies, must state at a minimum:

1. The names of the members attending;

³ It is unclear whether the Board complied with N.D.C.C. §§ 58-06-03 or 58-06-04, but those questions are beyond the scope of this opinion.

2. The date and time the meeting was called to order and adjourned;
3. A list of topics discussed;
4. A description of each motion made and whether the motion was seconded;
5. The results of every vote; and
6. The vote of each member on every recorded roll call vote.

N.D.C.C. § 44-04-21(2).

The minutes of the March 2 meeting contain only the most general description of the topics discussed and the results of every vote. Even if these general statements were sufficient to clearly indicate the topics discussed, which is questionable, the notes completely fail to mention when the meeting was called to order and adjourned, the motions that were made and seconded, and the vote of each member on every recorded roll call vote. Recorded roll call votes are required on all nonprocedural votes, such as approving bills and approving an airport abatement. Therefore, it is my opinion that the minutes of the March 2 meeting of the Pembina Township Supervisors are insufficient.⁴

CONCLUSIONS

1. It is my opinion that a separate notice was required to be filed and posted for the Board's March 2 meeting, and that the notice of that meeting was not provided in substantial compliance with N.D.C.C. § 44-04-20.
2. It is my opinion that the notice of the March 17 meeting of the township electors was in substantial compliance with N.D.C.C. § 44-04-20.
3. It is my opinion the minutes of the March 2 meeting of the Pembina Township Board of Supervisors do not meet the requirements of N.D.C.C. § 44-04-21.

⁴ Although minutes may be handwritten, a concerted effort should be made to ensure that the minutes are legible in their entirety. If minutes purportedly include all the minimum requirements, but are not legible, a good argument could be made that the minutes do not meet the minimum requirements.

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STEPS NEEDED TO REMEDY VIOLATIONS

The Board must convene a new meeting, preceded by sufficient public notice, at which the Board recreates its discussion at the March 2 meeting and reconsiders all the actions it took at the meeting. The meeting should also be attended by any former Board members who were in office on March 2, so the minutes of the March 2 meeting can be supplemented with the additional information and detail required by N.D.C.C. § 44-04-21(2). Although the March 2 meeting must be redone anyway, supplementing the March 2 minutes will help the Board recreate the meeting and will inform the public in greater detail on what occurred at the earlier meeting, including how each member voted on the actions taken at the meeting. Minutes must also be kept of the new meeting.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2. N.D.C.C. § 44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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